

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

<div>CHOBANI, LLC,</div> <div>Plaintiff,</div> <div>v.</div> <div>THE DANNON COMPANY, INC.</div> <div>Defendant.</div>	<div>CIVIL ACTION NO. 3:16-cv-00030-DNH-DEP</div> <div>ECF Case</div> <div>Hon. David N. Hurd</div> <div>DEMAND FOR JURY TRIAL</div>
<div>THE DANNON COMPANY, INC.,</div> <div>Counterclaim Plaintiff,</div> <div>v.</div> <div>CHOBANI, LLC</div> <div>Counterclaim Defendant.</div>	

**DECLARATION OF DR. STEWART TOWNSEND IN SUPPORT OF DANNON'S
MOTION FOR A TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION**

I, Dr. Stewart Townsend, hereby submit this Declaration to place certain factual
information before the Court and accordingly declare as follows:

1. I am over the age of 18, am fully competent to attest to, and have personal knowledge of, the facts set forth in this Declaration. If called upon to do so, I can competently testify to the facts set forth herein.

2. I am the Vice President of Research and Development for North America at The Dannon Company, Inc. (“Dannon”), where I have worked for approximately five and one-half years. I have more than twenty years of experience in Research and Development in the food industry. I received my PhD degree in Chemistry from Swansea University in Wales, United Kingdom, in 1991.

3. I submit this Declaration in support of Dannon’s motion for a temporary restraining order and preliminary injunction concerning certain advertising disseminated by Chobani, LLC and/or its affiliated entities (“Chobani”).

4. My understanding is that, among others, significant issues in this litigation center on: (i) the use of the non-nutritive sweetener sucralose as an ingredient in certain Dannon products, and, more specifically, whether chlorine is added to sucralose; (ii) whether chlorine atoms are commonly present in many other food ingredients, including those used by Chobani; (iii) whether chlorine is present in sucralose or Dannon products; and (iv) the safety and health benefits to consumers of sucralose.

The FDA Has Determined That Sucralose Is Safe

5. Sucralose, a zero-calorie, non-nutritive sweetener, has been approved¹ as a general purpose sweetener by the U.S. Food and Drug Administration (the “FDA”) since 1999. Sucralose has been extensively studied and the FDA reviewed more than 110 safety studies in

¹ 21 CFR 172.831.

approving the use of sucralose as a general purpose sweetener for food. Numerous countries around the world have approved sucralose for use in food.

6. Sucralose is commonly marketed as Splenda®, SucraPlus and many other brand names. It is an ingredient found in a wide variety of food and beverage products, including beverages, chewing gum, gelatins and dairy products, and can be used in cooking and baking.

7. The widespread incorporation of sucralose in food products relates to: (i) its no-calorie sweetening benefit (which is particularly important for consumers who are careful with sugar intake, or are diabetic, overweight, or avoiding sugar for other reasons); (ii) the fact that it does not promote dental cavities; and (iii) the fact that it is safe for consumption as a sweetener by consumers. In fact, the just-published 2015-2020 Dietary Guidelines for Americans accord with the view of leading global authorities—such as the European Food Safety Agency and the FDA—that low-calorie sweeteners, including sucralose, are safe to consume.

8. A statement that sucralose is “bad stuff” or is unhealthy is therefore false and harmful to the consuming public who are seeking safe alternatives to sugar.

Dannon Products Do Not Have Chlorine Added to Sucralose

9. Everything material is built on atoms. Chlorine is one of those atoms, along with carbon, oxygen and many others. Atoms very often combine to make *molecules* of different size and properties. The chemical composition of sucralose is $C_{12}H_{19}O_8Cl_3$. Thus, sucralose is a molecule with 12 carbon, 19 hydrogen, 8 oxygen, and 3 chlorine atoms linked together in a particular form that is very stable and safe to eat.

10. Sucralose is made through a process in which three atoms of chlorine are substituted for three hydrogen-oxygen groups on the sucrose molecule. As such, sucralose—like many other ingredients found in food—contains chlorine atoms, in the form of a chloride.

11. While Dannon uses sucralose in its product because of the benefits of sucralose, no chlorine is ever added to this ingredient. To claim that Dannon Light & Fit ® Greek nonfat yogurt, or any Dannon products, have chlorine added is literally false.

**Chlorine, In The Form Of Chlorides, Is Found In Numerous Everyday Foods,
Including Chobani Yogurts**

12. A chloride is a compound of chlorine bound to another element or group.

13. Chlorides are found throughout nature, and are necessary to many forms of life. In humans, the chloride ion (Cl⁻) is an essential electrolyte responsible for (among many other things) regulating fluid in and out of cells, transmission of nerve impulses and maintaining acid/base balance.

14. Chlorides are found in numerous food sources, such as salt (NaCl), olives, celery, seaweed, rye and milk (including breast milk). As such, all yogurt, including all Greek yogurt, contains chlorine in the form of chlorides.

15. Notably, *all* of Chobani's yogurts, including its Simply 100 SKUs, are made with milk, which contains chlorine in the form of potassium chloride (KCl) and chlorine ions (Cl⁻).

16. Additionally, Chobani's Simply 100 "Crunch" SKUs also contain chlorides as found in salt (NaCl), which is declared on the ingredient statement.

17. Additionally, Chobani's Simply 100 "Crunch" (all 3 SKUs) contain "baking soda." The processing of this ingredient includes ammonia as well as salt. It is surprising that this product leverages an "only natural ingredients" claim where baking soda is highly processed using ammonia (Solvay Process).²

² Simply 100 "Crunch" SKUs Blueberry Cookie Crumble, Strawberry Chocolate Truffle and Mango Cone Crisp all contain baking soda and salt, per the ingredient statement.

**The “Chlorine” Used To Treat Swimming Pools Is Not A Chloride,
And Is Not In Sucralose Or In Any Dannon Products**

18. The common term “Chlorine,” as used in swimming pool water, refers to calcium hypochlorite (pool chlorine). Calcium hypochlorite (pool chlorine) is a combination of chlorine and oxygen (ClO^- or chlorite), and other minerals such as calcium.

19. Calcium hypochlorite (pool chlorine)—which is used as a bleach or disinfectant—is not the same as a chloride, and could be harmful if ingested in food. It is distinct both chemically and practically from the chlorine atom (chloride) found in sucralose.

20. Calcium hypochlorite (pool chlorine) is not found in, or used to manufacture, any Dannon product. It is not used in sucralose. To suggest otherwise is misleading and harmful to consumers.

I declare under penalty of perjury that the foregoing is true and correct. Executed this

10th day of January 2016, at White Plains, New York.



STEWART TOWNSEND